

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

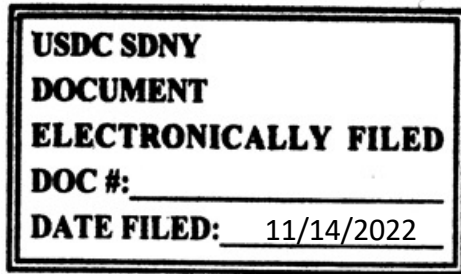
Rafael A. Jones,

Petitioner,

-against-

Joseph A. Caputo,

Respondent.



1:22-cv-02794 (JPC) (SDA)

ORDER

**STEWART D. AARON, United States Magistrate Judge:**

By Order, dated May 10, 2022, the Honorable John P. Cronan, United States District Judge, directed me to determine, in the pending habeas corpus proceeding, if Petitioner is competent and, if appropriate, to appoint a guardian ad litem or counsel pursuant to Fed. R. Civ. P. 17(c)(2). (5/10/22 Order of Ref., ECF No. 14.)

On August 29, 2022, following a telephonic hearing held on August 24, 2022, I issued an Order finding that Petitioner was competent and thus, declining to appoint a guardian ad litem or counsel.<sup>1</sup> (See 8/29/22 Order, ECF No. 47.) Since the issuance of the August 29 Order, the Court was informed that on October 7, 2022, the state court determined Petitioner to be unfit to proceed to trial and committed Petitioner to the custody of the Commissioner of the New York State Office of Mental Health ("OMH").<sup>2</sup> (See 10/31/22 Resp. Ltr., ECF No. 65, at 3.)

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<sup>1</sup> The Court made this determination in part due to the fact that since the issuance of the May 10 Order, Petitioner had been found to be fit to proceed to trial in the underlying, unexhausted state criminal proceedings. (See AAG McIver 7/8/22 Ltr., ECF No. 33, at 1.) In addition, the New York Attorney General's office had filed under seal a report from the Mid-Hudson Forensic Psychiatric Center in support of Petitioner's competency. (See Notification of Fitness to Proceed, ECF No. 38-2.)

<sup>2</sup> Currently, Petitioner is still on Rikers Island awaiting transfer to an OMH facility. (See *Jones, Rafael*, Inmate Lookup, NEW YORK CITY DEPARTMENT OF CORRECTION, <https://a073-ils-web.nyc.gov/inmatelookup/pages/home/home.jsf> (last accessed Nov. 14, 2022).) Accordingly, Joseph

The Court having found, pursuant to N.Y. Mental Hygiene Law § 33.13(c)(1), that the interests of justice significantly outweigh the need for confidentiality, no later than November 30, 2022, OMH shall file under seal the Bronx Forensic Psychiatric Court Clinic physicians' reports regarding Petitioner's competency referred to in Respondent's 10/31/22 letter and provide the Court with any other information OMH possesses regarding the most recent competency evaluation from Petitioner's ongoing state criminal proceedings. To the extent Petitioner would like to be heard with respect to his competency, no later than November 30, 2022, he may send a letter and any relevant documentation he would like the Court to consider.

**SO ORDERED.**

Dated: New York, New York  
November 14, 2022



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STEWART D. AARON  
United States Magistrate Judge

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Caputo remains the custodian of Petitioner, and the appropriate Respondent, until the time of Petitioner's transfer.